IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 454 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

DILIPSINH K PARMAR

Versus

DIRECTOR

Appearance:

1. Special Civil Application No. 454 of 1989

MR RR VAKIL for Petitioner No. 1

MR AJ DESAI AGP for Respondents No. 1-2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 25/10/2001

C.A.V. JUDGEMENT

1. By this petition under Articles 226 and 227 of the Constitution, the petitioner has challenged the order of his alleged reversion, the order of his removal from

service and the judgment and order of the Gujarat Civil Services Tribunal (hereinafter referred as 'the Tribunal' for short) in Appeals Nos.377 of 1987 and 137 of 1988 in which the orders of reversion and removal were called into question.

2. The challenge to the first order of reversion has been turned down, on the findings of fact, by the Tribunal on the ground that the reversion order was an administrative order and not a penal order. In any case, the controversy regarding the order of reversion recedes into background in view of the subsequent order of removal which was upheld by the Tribunal.

3. During the period of the petitioner's posting at Jamnagar, complaints containing allegations of acts of serious misconduct were made pursuant to which a departmental enquiry was held by the Director of Sainik Welfare, himself. The findings of the enquiry were recorded and discussed in the impugned order of removal itself. Therefore, the petitioner had challenged that order, firstly before this Court in Special Civil Application No.6461 of 1987, which he had withdrawn on 6.4.1988 and then preferred the appeals before the Tribunal. Out of the grounds of challenge agitated before the Tribunal, only two were canvassed before this Court.

4. Firstly, it was vehemently argued that the petitioner was subjected to double jeopardy and punished twice for the same misconduct insofar as the first order of reversion as well as the subsequent order of removal were based on the same charges. Perusing the impugned judgment, it appears that this submission has no factual basis as the first order of alleged reversion, of which a copy is not placed on record, was an administrative order pending enquiry. The order of alleged reversion was dated 22.6.1987 whereas the impugned order of removal was dated 11.11.1987, made after an enquiry held pursuant to the order dated 3.8.1987. Therefore, there is no substance in this first ground.

5. Secondly, it was vehemently argued that no separate enquiry report having been prepared at all, the impugned order of punishment could not be sustained. Relying upon Rule 9 (22) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, it was submitted that after the conclusion of the enquiry, a report has to be prepared and forwarded to the disciplinary authority. Sub-clause (ii) of Rule 9 (22) provides that where the enquiry authority is not itself the disciplinary

authority, it has to forward to the disciplinary authority the records of enquiry which should, inter alia, include a report prepared by the enquiry authority. This provision clearly excludes the forwarding of the enquiry report where the enquiry authority and the disciplinary authority is one and the same as it happened in the facts of the present case. Therefore, the Director, who was also the disciplinary authority, having himself conducted the enquiry, in the facts of this case, the aforesaid Rule could not have been applied. Accordingly, the second ground also fails.

6. The learned counsel for the petitioner also submitted that the criminal prosecution based on the same charges had subsequently resulted into acquittal of the petitioner which was also subsequently upheld by this Court. However, it was fairly conceded that no material whatsoever regarding the criminal prosecution and its result was to be found on the record of this case. In such circumstances, the judgment of the Apex Court in CAPT. M. PAUL ANTHONY v. BHARAT GOLD MINES LTD. [AIR 1999 SC 1416] could also not be applied.

7. In view of the facts and circumstances as above, the petition having no substance and the charges of serious acts of misconduct having been proved against the petitioner and the departmental enquiry having been, after appreciation of evidence, upheld by the Tribunal, no relief as prayed by the petitioner could be granted. Accordingly, the petition is dismissed and Rule is discharged with no order as to costs.

Sd/-
(D.H.Waghela, J.)
(KMG Thilake)